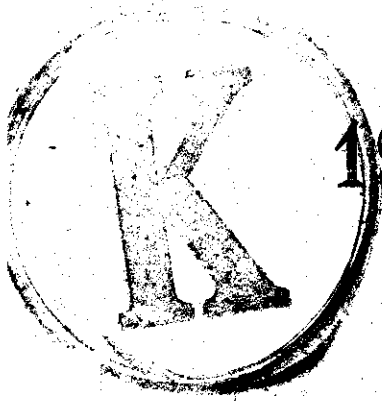




1952.

File No.

O. Transfer
of Property
152

P. 11 E Legal Deptt.

A BRANCH

Subject:— Opinions under the
Transfer of Property
Act 1882

O. Transfer of Property 152

File No.

Gen. 194 e.

345-A

Legal Department File No. C Transfer of Property/52

Sr. No.	R.I. & O.No.	Subject	pages
		Opinions under the Transfer of property Act, 1882.	
1.	<u>2842</u> <u>21-2-52</u>	Whether the existing safeguard provide in the loans scheme via If not, how best could Govt's money invested in the the loans be safeguarded. If Govt's interest in the assets created by a loanee is not fully secured under a mortgage, how else- and could a hire-purchase agreement be entered into by Govt. with a loanee in respect of the assets created by him his whereunde. Govt becomes the absolute owner.	1-6
2.	<u>4885</u> <u>31-3-52</u>	B'Bay Housing Board- recovery of rent.	7
3.	<u>5292</u> <u>24-4-52</u>	Whether the interest of Govt. in the assets created by the loanees out of the loans granted to them would be better secured under a hire purchase agreement rather than under a mortgage- deed so far as all moveables and not only motor vehicles are concerned.	9
4.	<u>7559</u> <u>3-1-52</u> <u>1559</u> <u>2-2-52</u>	Whether transfer of land excludes a mortgage will have possession.	11-13
5.	<u>8821</u> <u>21-5-52</u>	Whether the house of Babu Mabi Shaiikh can be brought to sale for recovery the dues under section 53 of the Transfer of property Act.	15

A.D.
12-4-56
C.E.

The question for the consideration of the R.L.A. are:-

- (1) Whether the existing safeguards provided in the loans scheme viz. the mortgagage of the assets, undertaking to repay and surety bond are adequate to ensure that Government money is fully secured.
- (2) If not, how best could Government's money invested in the loans be safeguarded.
- (3) If Government's interest in the assets created by a loanee is not fully secured under a mortgage, how else could it be fully secured?
- (4) Could a hire-purchase agreement be entered into by Government with a loanee in respect of the assets created by him whereunder Government becomes the absolute owner of the assets until the loan is fully paid back. How would this arrangement work out in practice and would it give any remedy to Government against third parties in case of subsequent sale of the assets by the loanee, and adequately meet the point at (3) above.

2. Question No. 1. It appears that under their scheme of rehabilitating refugees loans are granted to refugees for the purposes of their purchasing moveables like plant and machinery, furniture, equipment, vehicles etc. necessary for setting up their business. These goods are hypothecated to Government as security for the loans. In addition the loanees are required to give an undertaking to repay endorsed by two solvent sureties. As the law stands these appear to be the maximum safeguards that can be resorted to. In the opinion expressed by the Additional Secretary on the last occasion the question was whether if the mortgagor disposed of the motor car mortgaged by him in favour of Government it would be possible for Government to pursue their remedies against the purchaser. The question was answered in the

in the the negative. However under the personal covenant to pay contained in the mortgage-deed coupled with the provision for recovery of the loan as arrears of land revenue it would be possible to recover the amount of the loan either from the debtor from his ~~OTHER ASSETS~~ if any or from the sureties. The answer to the first question would appear to depend on the solvency or otherwise of the loanee and his sureties.

3. Question No. 2. As stated above where loans are granted to refugees for the purchase of moveable other than motor cars in addition to such articles being mortgaged to Government repayment of the loans should also be guaranteed by solvent sureties. This is the maximum that can be done in the circumstances of the case.

4. ~~The-third~~ third question is if the interest of Government in the assets created by the loanee is not fully secured under a mortgage, how else could it be fully secured. So far as moveable property other than motor cars is concerned, the answer would be that having regard to the nature of the property, it is not possible to improve upon the security offered by a mortgage unless the loanee is prepared to part with it possession.

5. The last question raised is about hire-purchase agreements. So far as motor vehicles are concerned, the form of the certificate of registration (i.e. Form G. in the First schedule to the Motor Vehicles Act, 1939) requires a note to be recorded on the certificate that the motor vehicle is held by the person registered as the registered owner under a hire-purchase agreement. In such cases there will be some source for a prospective purchaser to find out that the motor vehicle is not owned by the person who is shown as the registered owner and that his interest is that of a hirer. A hire-purchase agreement is an agreement for hire with an option to the hirer to purchase the

the goods. They become the absolute property of the hireer on paying the last of the instalments stipulated to be paid by him, but until then he cannot deal with the goods, having no ownership in them. (Law Lexicon; p.522). However under such an agreement there is no obligation on the hirer either to pay the entire amount and it is open to him to terminate the agreement earlier in which case Government will have no remedy against him if, the goods have deteriorated in value to such an extent as not to fetch adequate price.

Sd/- 26-2

Remembrancer of Legal Affairs.

U.R.to R.H.D. No. 2842, dated the 21st February, 1952.

M.R.D.
18-6-56
C.4

Bombay Housing
Board-

Recovery of rent.

Rent
- Rent must be certain or so stated that it can afterwards be ascertained and if it is so ascertainable, it may fluctuate. If the lessee should agree to pay whatever rent the lessor might impose, the lease is void (see Hulla's ^{for} Transition of Property Act, p.640). The Accountant General's suggestion to incorporate in the agreement from a provision binding the tenant to pay the revised rent with retrospective effect from the date of occupation on a month's notice in this behalf would mean an agreement to impose whatever rent the lessor, that is to say, the Board, might impose with retrospective effect from the date of occupation. It is, therefore, apparent that such an agreement would make the lease void. If the Board proposes to revise the rent after the work is completed, it may give a notice to the tenant of such revised rent and impose it prospectively. The view taken by the Board in its letter at p.157 ante is correct.

Ed--/-

29-3

M.R.D.
18-6-56
C.4

Remembrancer of Legal Affairs.

U.R. to L.&H.D.No. 4885 dated the 31st March 1952.

OFFICE OF THE R.L.A.

R.L.A. is requested to advise whether the in. of Government in the assets created by the advances of the loans granted to them would be better secured under a hirepurchase agreement rather than under a mortgage-deed, so far as all moveables and not only motor vehicles are concerned.

2. The question raised by the R.H.D. is not a question of law. The two methods, viz., mortgage without possession and hire-purchase agreement, of which a comparison is sought, are quite different transactions. As stated in para. 5 of R.L.A.'s opinion No. 2842, dated 21st February 1952 a hire-purchase agreement is an agreement for hire with an option to the hirer to purchase the goods. There is no binding agreement to purchase but they become the absolute property of the hirer on paying all the instalments stipulated to be paid by him. In the case of hire-purchase agreements the goods required by the refugees will have to be purchased by the Government and hired to them, while in the other case Government merely hands over the amount of the loan to the refugees who purchase the goods required by them and mortgage them in favour of Government. It is not clear whether the R.H.D. has satisfied itself that the method of hirepurchase agreements in regard to a sort of moveable properties required by the refugees will be convenient from an administrative point of view. Considering all this, it is for the R.H.D. to decide whether to adopt the practice of mortgages or hirepurchase agreements. The present practice is more in the interests of Government than that of taking hire-purchase agreement.

Sd/-
24-4

Remembrancer of Legal Affairs.

UFR. to R.H.D. No .6292, dated the 24th April 1952

M.S.D.
18-6-56

Submitted with reference to the note of the R.
(parall) at p.65 ante).

for full facts of the case pl. see the Collr's.
letter dated 11.12.50 at p. 13 ante.

A total loan of Rs. 5000/- as a tagai loan was sanctioned by the Collor. in 1948 to Shri A.H.Patil on the security of his certain survey numbers. Shri A.H. Patil executed two mortgage bounds for Rs.3500/- and Rs. 1500/- on 10.2.48 and 12.6.48 respectively mortgaging his survey Nos. 577,580 and 581. In terms of the conditions No. 6 (2) of the mortgage bound, the mortgagor had agreed not to transfer the land by way of mortgage, gift, sale, partition or otherwise till the tagai loan was paid off. In violation of this condition Shri A.H.Patil(Mortgagor) again mortgaged the mortgaged land to the C.C.Fruit Sale, Society on 6.1.50 for Rs. 1000/- along with the standing crops of Banana standing on the land. He has mortgaged the land by two mortgage bounds in favour of the society on 4.6.49 and 28.5.51 respectively. Copies of mortgage bounds in favour of the Govt. and the sale society are available in the separate tag in this file. In view of violation of this condition of mortgage on the receipt of a report from the Collector to that effect, the Commissioner ordered on 17-3-1950 that the loan of Rs.5000/- should be recovered summarily from Shri A.H.Patil. The papers have been sent to the R.L.A. for opinion whether transfer of land excluded a mortgage without possession.

M.R.D.
18-6-56
C.4

It is clear that even a mortgage without ~~trans-~~
fer of possession amounts in law to a "Transfer of
property" Clause 6(3) would apply to mortgages with or
without possession.

Sd/-

7-5

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7359 ,dated the 8th May 1952.

M.R.D.
18-6-58
C.4

OFFICE OF THE R.L.A.

Babu Nabi Shaikh was the Liquor Contractor for the year 1946-47 for the shop at Baharbhagaon and Shrimati Rasulbi Adam Shaikh had stood surety for Babu Nabi. The contractor failed to pay Rs. 1893/- out of the license fee.

Babu Nabih and his surety jointly owned House No. 1834 of Kolhapur. On 5th July 1949 they jointly passed a sale deed of the property in favour of Mahaxad Yusuf Adam (son of the Surety Rasulbih) and Shrimati Dulabi (wife of the defaulter). The licensee had no other property from which the Government dues could be recovered.

The question is whether the above house can be brought to sale for recovering the dues. The sale seems to be quite fraudulent and clearly colourable and under section 53 of the Transfer of property Act; it can be held to be voidable at the instance of any creditor who is likely to be defeated. The purchasers being very near relatives of the licensee and his surety can hardly contend that they had no knowledge about the financial embarrassment of the licensee Babu Nabi. Copy of the sale deed is not on record. We do not know if the consideration was nominal or real. The sale deed was passed in 1949 after Babu Nabi had incurred many other debts and had found himself unable to meet his liabilities.

Under these circumstances the house may be attached and brought to sale under section 155 of the Land Revenue Code for recovering the amount due to the Government. The purchasers under the sale deed of 1949 may then file a suit for a declaration that the property was not liable to be attached as it did not belong to the defaulter. It will be possible to defend that suit on the ground that the transfer was fraudulent and was voidable under section 53 of the Transfer of Property Act.

Sd/-
21-5

Remembrancer of Legal Affairs. P.

~~SECRET~~

~~SECRET~~

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8521 dated the 21st May 1952.

M.R.D.
18-6-56
C.4

C O N T E N T S.

Legal Department File No. 0 Transfer of Property/52

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4.	<u>1559</u> 23-1-52	<u>1559</u> ~~2-2-52~~ Whether transfer of land excludes a mortgage will have possession.	11-13
5.	<u>8221</u> 21-5-52	Whether the house of Babu Nabi Shaikh can be brought to sale for recovery the dues under section 53 of the Transfer of property Act.	15